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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,478	12/21/2001	James B. Melesky	13811	4450

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EXAMINER

A, PHI DIEU TRAN

ART UNIT PAPER NUMBER

3637

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,478

Applicant(s)

MELESKY, JAMES B.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14,16,17,20-22,24,25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14,16,17,20-22,24,25 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Brush jr. et al (4048926).

Waters et al shows an insulating cover comprising a continuous frame (26, 20, 24, 22) having spaced side walls and spaced end walls and which frame is formed of a free standing insulating material, the frame defining an opening therethrough for alignment with the access opening and the frame being of a size to generally surround the access opening, a closure member (28) formed of a free standing insulating material and having side and end walls, the closure member, the insulating material of the closure member being an expanded polymeric material (col 2 line 40).

Waters et al does not show the closure member being complementary to and snugly seats within the frame to create a first continuous seal within the frame when positioned within the frame in covering relationship with respect to the access opening defined by the frame, the closure member including flange portions which extend laterally outwardly relative to the depending central portion for seating against upper surfaces of the side and end walls of the frame to thereby form a second continuous seal with the frame.

Brush Jr. et al shows a closure member having a body portion having a depending central body portion (12) of a size to complementary fit within the frame (41, 38) defining an access

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opening to thereby create a continuous first seal within the frame when positioned within the frame in covering relationship with respect to the access opening defined by the frame to enable the secured sealing of the interior of the access opening from the outside.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al to show the closure member being complementary to and snugly seats within the frame to create a first continuous seal within the frame when positioned in covering relationship with respect to the access opening defined by the frame because it would enable the secure sealing of the interior of the access opening from the outside as taught by Brush Jr. et al.

Waters et al as modified by Brush jr. et al shows the closure member including flange portions which extend laterally outwardly relative to the depending central portion for seating against upper surfaces of the side and end walls of the frame to thereby form a second continuous seal with the frame.

3. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Brush jr. et al (4048926) as applied to claim 14 above and further in view of Fier (4302126).

Waters et al as modified shows all the claimed limitations except for the side and end walls of the closure member being tapered from an upper surface of the closure member toward a lower surface thereof, the side and end walls of the frame are tapered inwardly from an upper surface toward a lower surface of the side and end walls thereof such that the tapered side and end walls of the closure member cooperatively engage the tapered side and end walls of the frame.

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Fier (figure 9) shows a closure (49) having ends and side walls (the four quadrants of the diameter) being tapered from an upper surface of the closure member toward a lower surface thereof, the side and end walls of the frame (40) being tapered inwardly from an upper surface toward a lower surface of the side and end walls (the four quadrants of the diameter) such that the tapered side and end walls of the closure member cooperatively engage the tapered side and end walls of the frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modifies structure to show the side and end walls of the closure member being tapered from an upper surface of the closure member toward a lower surface thereof, the side and end walls of the frame are tapered inwardly from an upper surface toward a lower surface of the side and end walls thereof such that the tapered side and end walls of the closure member cooperatively engage the tapered side and end walls of the frame as taught by Fier because having tapering mating surfaces at joints would ensure a tight fit for the mating parts without resorting to tight manufacturing tolerance and thus resulting in cost saving.

4. Claims 17, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Brush jr. et al (4048926) as applied to claim 14 above and further in view of Sciambi et al(4591022).

Waters et al as modified shows all the claimed limitations except for the frame including a generally continuous depending portion extending from each of the side and end walls, the generally continuous depending portions being configured so as to extend within the access opening and to frictionally seat within a structural frame defining the access opening.

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Sciambi et al (figures 1-2) shows the frame (196) including a depending portion (50) extending from each of the side and end walls, the depending portions being configured so as to extend within the access opening and to frictionally seat within a structural frame (26, 22) defining the access opening to enable the easy fastening of the frame to a structural frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the frame including a generally continuous depending portion extending from each of the side and end walls, the generally continuous depending portions being configured so as to extend within the access opening and to frictionally seat within a structural frame defining the access opening because it would enable easy secure fastening of the frame to a structural frame as taught by Sciambi et al.

Per claim 20, Waters et al as modified shows the frame including an upper section (the bottom section of 20), which extends laterally outwardly about the generally continuous depending portion thereof so as to be seated above the frame defining the access opening.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al and Sciambi et al as applied to claim 20 above, and further in view of Anghinetti et al (3896595).

Waters et al as modified shows all the claimed limitations except for the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place.

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Anghinetti et al discloses a handle (38) secured to the lower surface of the depending central body portion (18) of the closure member so as to be accessible within the access opening when the insulating cover is in place to facilitate easy maneuvering of the closure member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place because it would enable easy maneuvering of the closure member from the access opening as taught by Anghinetti et al.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 14 above, and further in view of Anghinetti et al (3896595).

Waters et al as modified shows all the claimed limitations except for the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place.

Anghinetti et al discloses a handle (38) secured to the lower surface of the depending central body portion (18) of the closure member so as to be accessible within the access opening when the insulating cover is in place to facilitate easy maneuvering of the closure member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the

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closure member so as to be accessible within the access opening when the insulating cover is in place because it would enable easy maneuvering of the closure member from the access opening as taught by Anghinetti et al.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 14 above, and further in view of Fuller (4281743) and Porter (5628158).

Waters et al as modified shows all the claimed limitations except for the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for adhesively securing the opposing edges in inter-fitted relationship so as to form a unified closure member.

Fuller shows the closure member including at least first and second components (52, 53a, 53b, 52, figure 2) each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for securing the opposing edges in inter-fitted relationship to form a unified closure member.

Porter discloses adhesive means joining panel edges together.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween as taught by Fuller, and means for adhesively securing the opposing edges in inter-fitted relationship to form a unified closure member because having the closure member made of multiple components would

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opposing edges engaged one another to create tortuous seal path therebetween would enable the creation of a large closure member from smaller pieces and thus resulting in ease of manufacturing and transport, and having the edges of the components joined adhesively would ensure the proper securing of the components together at assembly as taught by Porter.

8. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Brush Jr. et al as applied to claim 14 above, and further in view of Daw et al (4832153).

Waters et al as modified shows all the claimed limitations except for the closure member being coated with a fire retardant material.

Daw et al discloses a closure member being coated with a fire retardant material (col 2 lines 47) to ensure safety against fire.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member being coated with a fire retardant material because it would protect the closure from fire as taught by Daw et al.

Response to Arguments

9. Applicant's arguments filed 3/1/05 to claims 14, 16-17, 20-22, 24-25, 27 have been fully considered but they are not persuasive.

10. With respect to applicant's argument that Brush Jr. et al reference is non-analogous, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the prior art reference is reasonably

pertinent to the particular problem with which the applicant was concerned. The reference teaches a way to provide a secured covering to an opening. The teaching provides a closure member (12) to an opening and the closure enables the secured and complete covering of the opening at the edges per the seals established by the mating surfaces. Applicant was trying to solve the same issue (providing a closure member to an opening). The argument is thus moot.

11. With respect to applicant's arguments that there is no suggestion or motivation to make the combination with Waters et al and Brush Jr. et al, examiner respectfully points out that the combination of the references provide secure sealing of the closure member to the opening per the framing. The enhancement thus allows Waters et al's structure to tightly seal the opening and improves insulation. The argument is thus moot.

12. With respect to applicant's argument that Brush Jr et al teaches away from providing an insulation barrier as a small breather hole is provided in the door, examiner respectfully points out that the outer peripheral surfaces of the body portion of Brush Jr et al forms a matingly sealing surface with the surrounding periphery of the opening. The feature allows for the tight fit of the mating surfaces at the periphery of the body portion and the framing of the opening. The teaching thus enhances the tight fit of the closure member of Waters et al. The argument is thus moot.

13. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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14. With respect to applicant's arguments that Waters et al does not suggest the desirability of the proposed combination, examiner respectfully disagrees. As pointed out above, the modification of Waters et al by Brush Jr. et al allows the closure member to better insulate the interior space of the opening. Also, the combination of the references satisfies the snug fit seal of claim 14. The argument is thus moot.

15. With respect to applicant's argument to Fier, examiner respectfully points out the tapering structure of Fier enables the structure to securely seal and provide a good insulating surface. Having the tapering mating surface allows the structures to easily fit together without having to resort to tight manufacturing tolerances of the structures. The argument is thus moot.

16. With respect to Sciambi et al, examiner would like to point out that the teachings of Sciambi et al disclose the claimed limitations to the frame including **generally** continuous depending portion. The structure is seated against the frame and thus provides a frictional seat against the frame. The argument is thus moot.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

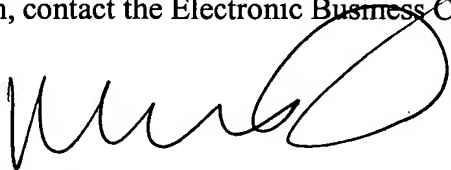
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

4/22/05